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*Attorneys for Defendants
Portfolio Recovery Associates, LLC, PRA
Group, Inc., and Neal Stern*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**IN RE: PORTFOLIO
RECOVERY ASSOCIATES,
LLC, TELEPHONE CONSUMER
PROTECTION ACT
LITIGATION**

Case No. 3:11-md-02295-JAH-BGS

Hon. John A. Houston
Hon. Bernard G. Skomal

**ANSWER OF DEFENDANTS
PORTFOLIO RECOVERY
ASSOCIATES, LLC, PRA GROUP,
INC., AND NEAL STERN**

JURY TRIAL DEMANDED

Defendants Portfolio Recovery Associates, LLC, PRA Group, Inc., and Neal Stern (collectively “PRA”) answer the Plaintiffs’ First Amended Consolidated Complaint (Dkt. No. 67) as follows, denying all allegations except as otherwise

1 stated¹:

2 1. Paragraph 1 contains legal conclusions that do not require a response.
3 To the extent that a response is required, PRA admits that a portion of its business
4 involves the collection of accounts receivable from consumers and denies the
5 remaining allegations in Paragraph 1.

6 2. PRA admits that Plaintiff Jeremy Frydman is a natural person. PRA
7 lacks sufficient information to form a belief as to the truth of the remaining
8 allegations in Paragraph 2 and therefore denies them.

9 3. PRA admits that Plaintiff John Howard is a natural person. PRA lacks
10 sufficient information to form a belief as to the truth of the remaining allegations in
11 Paragraph 3 and therefore denies them.

12 4. PRA admits that Plaintiff Sam Marin is a natural person. PRA lacks
13 sufficient information to form a belief as to the truth of the remaining allegations in
14 Paragraph 4 and therefore denies them.

15 5. PRA admits that Plaintiff Jesse Meyer is a natural person. PRA lacks
16 sufficient information to form a belief as to the truth of the remaining allegations in
17 Paragraph 5 and therefore denies them.

18 6. PRA admits that Plaintiff Fredrick L. Jury is a natural person. PRA
19 lacks sufficient information to form a belief as to the truth of the remaining
20 allegations in Paragraph 6 and therefore denies them.

21 7. PRA admits that Plaintiff Danny Allen is a natural person. PRA lacks
22 sufficient information to form a belief as to the truth of the remaining allegations in
23 Paragraph 7 and therefore denies them.

24 8. PRA admits that Portfolio Recovery Associates, LLC is a Delaware
25

26 ¹ Plaintiffs served their First Amended Consolidated Complaint on PRA on
27 November 14, 2012. The Parties jointly moved the Court to set the time for PRA to
28 answer as August 14, 2015. (Dkt. No. 267.) The Court thereafter ordered PRA to
answer by August 14, 2015. (Dkt. No. 269.)

1 limited liability company with offices at 120 Corporate Boulevard, Norfolk,
2 Virginia 23502. PRA admits that at times it uses the mails and telephone to contact
3 consumers who owe debts. PRA admits that it acts as a “debt collector” in certain
4 circumstances and instances as that term is sometimes defined. PRA denies the
5 remaining allegations in Paragraph 8.

6 9. PRA admits that PRA Group, Inc., formerly “Portfolio Recovery
7 Associates, Inc.,” is a Delaware corporation with offices at 120 Corporate
8 Boulevard, Norfolk, Virginia 23502. PRA admits that PRA Group, Inc. is a
9 publicly-traded company, and that Portfolio Recovery Associates, LLC is a
10 subsidiary of PRA Group, Inc. The remaining allegations in Paragraph 9 are legal
11 conclusions that do not require a response. To the extent that a response is required
12 to the remaining allegations in Paragraph 9, PRA denies them.

13 10. PRA admits that Neal Stern is a natural person, that Mr. Stern resides
14 in Virginia, and that Mr. Stern is the Executive Vice President, Operations, of PRA
15 Group, Inc. The remaining allegations in Paragraph 10 are legal conclusions that do
16 not require a response. To the extent that a response is required to the remaining
17 allegations in Paragraph 10, PRA denies them.

18 11. PRA admits that Plaintiffs purport to make allegations against
19 Defendants John Doe 2 through 100, that Plaintiffs purport to be ignorant of certain
20 information about Defendants John Doe 2 through 100, and that Plaintiffs represent
21 that they will seek leave to amend their First Amended Consolidated Complaint.
22 The remaining allegations in Paragraph 11 are legal conclusions that do not require
23 a response. To the extent that a response is required to the remaining allegations in
24 Paragraph 11, PRA denies them.

25 12. The allegations in Paragraph 12 are legal conclusions that do not
26 require a response. To the extent that a response is required to the allegations in
27 Paragraph 12, PRA denies them.
28

1 13. PRA admits that Plaintiffs purport to refer to “[a]ll Defendants” as
2 “Defendants” but this Answer is made only on behalf of Defendants Portfolio
3 Recovery Associates, LLC, PRA Group, Inc., and Neal Stern. This Answer is not
4 made on behalf of any of the as-yet unidentified “Does 2 to 100,” as no specific
5 allegations have been made against them that would allow any Answer at this time.

6 14. Paragraph 14 contains conclusions of law that do not require a
7 response. To the extent a response is required to the allegations in Paragraph 14,
8 PRA denies them.

9 15. Paragraph 15 contains legal conclusions that do not require a response.
10 To the extent that a response is required to the allegations in Paragraph 15, PRA
11 admits that this Court has federal subject matter jurisdiction under 47 U.S.C. § 227.

12 16. Paragraph 16 contains legal conclusions that do not require a response.
13 To the extent that a response is required to the allegations in Paragraph 16, PRA
14 admits that this Court has personal jurisdiction over PRA under California Code of
15 Civil Procedure § 410.10.

16 17. Paragraph 17 contains legal conclusions that do not require a response.
17 To the extent that a response is required to the allegations in Paragraph 17, PRA
18 admits that venue is proper in this Court under 28 U.S.C. § 1391(b)(2).

19 18. PRA admits that Plaintiffs purport to make their allegations based on
20 information and belief “and/or the documents and information currently available
21 and in the hands of Plaintiffs’ attorneys.” PRA lacks sufficient information so as to
22 form a belief as to the truth of remaining allegations in Paragraph 18 and therefore
23 denies them.

24 19. PRA admits that Plaintiffs purport to allege that PRA or its agents
25 made certain telephone calls to Plaintiffs’ cellular telephone numbers. The
26 remaining allegations in Paragraph 19 are legal conclusions that do not require a
27 response. To the extent that a response is required to the remaining allegations in
28

1 Paragraph 19, PRA denies them.

2 20. The allegations in Paragraph 20 are a mixed question of fact and law.
3 PRA lacks sufficient information to form a belief as to the truth of the factual
4 allegations in Paragraph 20 and therefore denies them. The remaining allegations in
5 Paragraph 20 are legal conclusions that do not require a response. To the extent that
6 a response is required to the remaining allegations in Paragraph 20, PRA denies
7 them.

8 21. Paragraph 21 contains legal conclusions that do not require a response.
9 To the extent a response is required, PRA admits that in certain circumstances and
10 instances it has placed using an Avaya Proactive Contact Dialer. PRA denies that
11 the Avaya Proactive Contact Dialer, or any other method used by PRA to place
12 telephone calls, qualifies as an “automatic telephone dialing system” under
13 47 U.S.C. § 227(a)(1). To the extent a further response is required, PRA denies the
14 remaining allegations in Paragraph 21.

15 22. The allegations in Paragraph 22 contain legal conclusions that do not
16 require a response. To the extent that a response is required to the allegations in
17 Paragraph 22, PRA admits that it did not place the alleged calls for emergency
18 purposes.

19 23. PRA denies the allegations in Paragraph 23, admitting only that in
20 certain circumstances and instances it uses skip-tracing services.

21 24. The allegations in Paragraph 24 contain legal conclusions that do not
22 require a response. PRA denies that it placed “automated telephone calls” to
23 Frydman. PRA has disclosed that, on information and belief based on Frydman’s
24 responses to PRA’s discovery requests, that Frydman’s cellular telephone number
25 is xxx-xxx-x852. To the extent that a further response is required to the allegations
26 in Paragraph 24, PRA denies them.

27 a. PRA admits that it placed a call to Frydman at xxx-xxx-x852 on
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1 December 8, 2010, and denies the remaining allegations in Paragraph 24a.

2 b. PRA denies the allegations in Paragraph 24b.

3 c. PRA denies the allegations in Paragraph 24c.

4 d. PRA admits that it placed a call to Frydman at xxx-xxx-x852 on
5 December 29, 2010. PRA denies the remaining allegations in Paragraph 24d.

6 e. PRA admits that it placed a call to Frydman at xxx-xxx-x852 on
7 December 29, 2010. PRA denies the remaining allegations in Paragraph 24e.

8 f. PRA denies the allegations in Paragraph 24f.

9 g. PRA denies the allegations in Paragraph 24g.

10 h. PRA admits that it placed a call to Frydman at xxx-xxx-x852 on
11 January 7, 2011. PRA denies the remaining allegations in Paragraph 24h.

12 i. PRA admits that it placed a call to Frydman at xxx-xxx-x852 on
13 January 7, 2011. PRA denies the remaining allegations in Paragraph 24i.

14 j. PRA admits that it placed a call to Frydman at xxx-xxx-x852 on
15 January 9, 2011. PRA denies the remaining allegations in Paragraph 24j.

16 k. PRA admits that it placed a call to Frydman at xxx-xxx-x852 on
17 January 10, 2011. PRA denies the remaining allegations in Paragraph 24k.

18 l. PRA admits that it placed a call to Frydman at xxx-xxx-x852 on
19 January 12, 2011. PRA denies the remaining allegations in Paragraph 24l.

20 m. PRA admits that it placed a call to Frydman at xxx-xxx-x852 on
21 January 12, 2011. PRA denies the remaining allegations in Paragraph 24m.

22 n. PRA denies the allegations in Paragraph 24n.

23 o. PRA admits that it placed a call to Frydman at xxx-xxx-x852 on
24 January 14, 2011. PRA denies the remaining allegations in Paragraph 24o.

25 p. PRA admits that it placed a call to Frydman at xxx-xxx-x852 on
26 January 16, 2011. PRA denies the remaining allegations in Paragraph 24p.

27 q. PRA admits that it placed a call to Frydman at xxx-xxx-x852 on
28

1 January 17, 2011. PRA denies the remaining allegations in Paragraph 24q.

2 r. PRA admits that it placed a call to Frydman at xxx-xxx-x852 on
3 January 17, 2011. PRA denies the remaining allegations in Paragraph 24r.

4 s. PRA denies the allegations in Paragraph 24s.

5 t. PRA admits that it placed a call to Frydman at xxx-xxx-x852 on
6 January 19, 2011. PRA denies the remaining allegations in Paragraph 24t.

7 25. PRA admits that PRA has attempted to collect an outstanding
8 consumer debt from Plaintiff Frydman. PRA lacks sufficient information to form a
9 belief as to the truth of the remaining allegations in Paragraph 25 and therefore
10 denies them.

11 26. PRA denies the allegations in Paragraph 26.

12 27. PRA admits that it has attempted to collect an outstanding consumer
13 debt from Plaintiff Howard. PRA lacks sufficient information to form a belief as to
14 the truth of the remaining allegations in Paragraph 27 and therefore denies them.

15 28. PRA lacks sufficient information to form a belief as to the truth of the
16 allegations in Paragraph 28 and therefore denies them.

17 29. PRA lacks sufficient information to form a belief as to the truth of the
18 allegations in Paragraph 29 and therefore denies them.

19 30. PRA affirmatively states that, on information and belief based on
20 Plaintiff Marin's responses to PRA's First Set of Discovery Requests in his
21 individual action, Marin's cellular telephone number is xxx-xxx-x925. PRA admits
22 that it obtained the number xxx-xxx-x925 through skip-tracing. PRA denies the
23 remaining allegations in Paragraph 30.

24 31. PRA admits that between October 2010 and December 19, 2010 that it
25 placed more than 20 calls to Marin at xxx-xxx-x925 and that PRA called Marin at
26 that number on December 19, 2010, and December 28, 2010. PRA denies that it
27 called Marin twice per day and denies that it called Marin on January 25, 2010.
28

1 PRA denies the remaining allegations in Paragraph 31.

2 32. PRA denies the allegations in Paragraph 32.

3 33. PRA denies the allegations in Paragraph 33.

4 34. PRA admits that Plaintiff Meyer purports to bring allegations based on
5 PRA's attempts to collect an outstanding balance that Meyer originally owed to the
6 Computer Learning Center. PRA denies the remaining allegations in Paragraph 34.

7 35. PRA admits that it called Meyer on September 1, 2010, November 4,
8 2010, December 14, 2010, and January 4, 2011. PRA denies the remaining
9 allegations in Paragraph 35.

10 36. PRA denies the allegations in Paragraph 36.

11 37. PRA denies the allegations in Paragraph 37.

12 38. PRA admits that it obtained Meyer's cellular telephone number
13 through skip-tracing. PRA lacks sufficient information to form a belief as to the
14 truth of the remaining allegations in Paragraph 38 and therefore denies them.

15 39. PRA admits that it has attempted to collect an outstanding balance
16 owed by Plaintiff Jury. PRA lacks sufficient information about Jury's allegations
17 related to his alleged cellular telephone account to form a belief as to the truth of
18 those allegations and therefore denies them. PRA denies the remaining allegations
19 in Paragraph 39.

20 40. PRA denies the allegations in Paragraph 40.

21 41. PRA admits that it began to call Plaintiff Allen in October 2010. PRA
22 denies the remaining allegations in Paragraph 41.

23 42. Paragraph 42 contains conclusions of law that do not require a
24 response. To the extent that a response is required, PRA lacks sufficient
25 information to form a belief as to the truth of the allegations in Paragraph 42 and
26 therefore denies them.

27 43. PRA admits that it received a letter from Allen dated November 11,
28

1 2010 and that a call was placed to Allen on November 16, 2011. PRA denies the
2 remaining allegations in Paragraph 43, including the conclusions of law to which
3 no response is required.

4 44. PRA admits the allegations in Paragraph 44 and admits that Paragraph
5 44 purports to quote the Telephone Consumer Protection Act (TCPA) but denies
6 that this includes the full statutory text and respectfully refers the Court to the
7 statute for its full effect and meaning.

8 45. PRA admits the allegations in Paragraph 45 and admits that Paragraph
9 45 purports to quote the TCPA but denies that this includes the full statutory text
10 and respectfully refers the Court to the statute for its full effect and meaning.

11 46. PRA admits that Plaintiffs purport to bring this action on behalf of “the
12 Class” as Plaintiffs define that term in Paragraph 46 but denies that the putative
13 Class is appropriate for certification. To the extent that Paragraph 46 contains legal
14 conclusions that do not require a response, PRA denies those allegations.

15 47. Paragraph 47 contains legal conclusions that do not require a response.
16 To the extent that a response is required to the allegations in Paragraph 47, PRA
17 denies them.

18 48. Paragraph 48 contains legal conclusions that do not require a response.
19 To the extent that a response is required to the allegations in Paragraph 48, PRA
20 denies them.

21 49. Paragraph 49 contains legal conclusions that do not require a response.
22 To the extent that a response is required to the allegations in Paragraph 49, PRA
23 denies them.

24 50. Paragraph 50 contains legal conclusions that do not require a response.
25 To the extent that a response is required to the allegations in Paragraph 50, PRA
26 denies them.

27 51. Paragraph 51 contains legal conclusions that do not require a response.
28

1 To the extent that a response is required to the allegations in Paragraph 51, PRA
2 denies them.

3 52. The allegations in Paragraph 52 contain questions of law that do not
4 require a response. To the extent a further response is required, the allegations in
5 Paragraph 52 lack sufficient specificity for PRA to be able to admit or deny them
6 and therefore PRA denies them.

7 53. PRA denies that it has engaged in any “improper practices.” The
8 remaining allegations in Paragraph 53 are legal conclusions that do not require a
9 response. To the extent that a response is required to the remaining allegations in
10 Paragraph 53, PRA denies them.

11 54. PRA admits that Plaintiffs Meyer, Jury, and Allen purport to allege a
12 California subclass but denies that such class is appropriate for certification. The
13 remaining allegations in Paragraph 54 are legal conclusions that do not require a
14 response. To the extent that a response is required to the remaining allegations in
15 Paragraph 54, PRA denies them.

16 55. PRA incorporates by reference the preceding paragraphs of this
17 Answer.

18 56. PRA admits that in the course of its business it at times makes
19 outgoing calls to consumers and others. PRA denies that it has violated any law.
20 PRA lacks sufficient information to form a belief as to the truth of the remaining
21 allegations in Paragraph 56 and therefore denies them.

22 57. Paragraph 57 contains legal conclusions that do not require a response.
23 To the extent that a response is required, PRA denies that it has violated any law
24 and denies that any predictive dialer or other technology PRA used to place
25 telephone calls is an “automatic telephone dialing system” under 47 U.S.C.
26 § 227(a)(1), and PRA denies the remaining allegations in Paragraph 57.

27 58. The allegations of Paragraph 58 contain conclusions of law that do not
28

1 require a response. To the extent that further response is required, PRA admits that
2 it obtains consumers' phone numbers in several ways including from original
3 creditors and through skip-tracing, and denies all other allegations in Paragraph 58.

4 59. PRA denies that it has violated any law. The allegations in Paragraph
5 59 contain legal conclusions that do not require a response. To the extent that a
6 response is required to the allegations in Paragraph 59, PRA denies them.

7 60. PRA admits that Plaintiffs purport to seek statutory damages under
8 47 U.S.C. § 227(b)(3). PRA denies that it has violated any law. The remaining
9 allegations in Paragraph 60 contain legal conclusions that do not require a response.
10 To the extent that a response is required to the remaining allegations in
11 Paragraph 60, PRA denies them.

12 61. PRA incorporates by reference the preceding paragraphs of this
13 Answer.

14 62. PRA admits that Paragraph 62 purports to quote Portfolio Recovery
15 Associates LLC's February 28, 2012 Form 10-K but affirmatively states that this is
16 an excerpt and respectfully refers the Court to the Form 10-K for its meaning and
17 effect. PRA denies that it has violated any law. The remaining allegations in
18 Paragraph 62 are legal conclusions that do not require a response. To the extent that
19 a response is required to the remaining allegations in Paragraph 62, PRA denies
20 them.

21 63. Paragraph 63 contains conclusions of law that do not require a
22 response. PRA denies that it has violated any law. PRA admits that Mr. Stern has
23 responsibilities regarding use of PRA's technology and participates in meetings
24 regarding the same. PRA lacks sufficient information to form a belief as to the truth
25 of the remaining allegations in Paragraph 63 and therefore denies them.

26 64. PRA admits that Paragraph 64 purports to quote a short excerpt of a
27 declaration of Neal Stern and respectfully refers the Court to the full text of the
28

1 declaration for its meaning and effect. The remaining allegations in Paragraph 64
2 are legal conclusions that do not require a response. To the extent that a response is
3 required to the remaining allegations in Paragraph 64, PRA denies them.

4 65. PRA admits that Paragraph 65 purports to quote an excerpt of Portfolio
5 Recovery Associates, Inc.'s April 27, 2011 Schedule 14A but respectfully refers the
6 Court to the full text of the document for its meaning and effect. PRA denies the
7 remaining allegations in Paragraph 65.

8 66. PRA denies that it has violated any law. Paragraph 66 contains legal
9 conclusions that do not require a response. To the extent that a response is required
10 to the allegations in Paragraph 66, PRA denies them.

11 67. PRA denies that it has violated any law. Paragraph 67 contains legal
12 conclusions that do not require a response. To the extent that a response is required
13 to the allegations in Paragraph 67, PRA denies them.

14 68. PRA admits that Paragraph 68 purports to quote sentence fragments
15 from Portfolio Recovery Associates, Inc.'s 2009, 2010, and 2011 Form 10-K. PRA
16 denies that it has violated any law or that this purported quote in any way supports
17 Plaintiffs' allegations and respectfully refers the Court to the full documents for
18 their meaning and effect. The remaining allegations in Paragraph 68 are legal
19 conclusions that do not require a response. To the extent that a response is required
20 to the remaining allegations in Paragraph 68, PRA denies them.

21 69. PRA denies that it has violated any law. Paragraph 69 contains legal
22 conclusions that do not require a response. To the extent that a response is required
23 to the allegations in Paragraph 69, PRA denies them.

24 70. PRA admits that Plaintiffs purport to seek the relief stated in Paragraph
25 70. PRA denies that it has violated any law. Paragraph 70 contains legal
26 conclusions that do not require a response. To the extent that a response is required
27 to the allegations in Paragraph 70, PRA denies them.
28

Affirmative Defenses

1
2 1. Plaintiffs' claims are barred, in whole or in part, for failure to state a
3 claim on which relief can be granted.

4 2. Plaintiffs' claims are barred, in whole or in part, because of accord,
5 satisfaction, or release.

6 3. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs
7 suffered no actual damages as a result of PRA's alleged conduct.

8 4. Plaintiffs' claims are barred, in whole or in part, by the failure to
9 mitigate damages.

10 5. Plaintiffs' purported injury has been caused, in whole or in part, by
11 Plaintiffs' own conduct, actions, omissions, failure to act, or consent.

12 6. To the extent that Plaintiffs' claims relate to conduct outside of the
13 relevant statutes of limitations, Plaintiffs' claims are, in whole or in part, time-
14 barred.

15 7. Plaintiffs' claims are barred, in whole or in part, by the doctrine of
16 unclean hands.

17 8. Plaintiffs' claims are barred, in whole or in part, by the doctrine of
18 laches.

19 9. Plaintiffs' claims are barred, in whole or in part, by the doctrine of
20 estoppel.

21 10. Any violation of the law or damage allegedly suffered by Plaintiffs
22 was due to the affirmative actions or omission by Plaintiffs or others, and does not
23 give rise to any claim for damages against PRA.

24 11. To the extent that any violation of law occurred, which PRA expressly
25 denies, the violation was not intentional and resulted from a bona fide error
26 notwithstanding the maintenance of procedures reasonably adapted to avoid such
27 error.
28

12. To the extent that the trier of fact determines that Plaintiffs are entitled to recover anything in this action. PRA is entitled to a set off or recoupment from any such recovery in the amount of the unpaid obligations owed by Plaintiffs to PRA.

13. Plaintiffs' claims are barred, in whole or in part, by the United States Constitution and applicable state constitutions.

14. PRA expressly and specifically reserves the right to amend this Answer to add, delete, or modify affirmative defenses based on legal theories, facts, and circumstances which may or will be developed through discovery or further legal analysis of Plaintiffs' claims and PRA's position in this litigation.

15. PRA further reserves its right to compel arbitration under the terms of any applicable contract, agreement, or other obligation relevant to the claims in this action.

Prayer for Relief

Wherefore, PRA respectfully requests that this Court determine and adjudge as follows:

1. That the First Amended Consolidated Complaint be dismissed with prejudice.

2. That Plaintiffs take nothing by their First Amended Consolidated Complaint.

3. That PRA expressly reserves its right to move for, as appropriate, all of its costs, disbursements, and expenses incurred in this action. And

4. That the Court award such other and further relief as it deems just and proper.

DATED: August 14, 2015

By: s/Jennifer M. Robbins

Christopher W. Madel, MN Reg. No. 230297
(pro hac vice)

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